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**FILED**  
DISTRICT COURT OF GUAM

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**MARY L.M. MORAN**  
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**DISTRICT COURT OF GUAM**

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TERRITORY OF GUAM

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DAVID J. LUBOFSKY,

Civil Case No. 04-00031

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Plaintiff,

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vs.

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GOVERNMENT OF GUAM and  
47 GOVERNMENT OF GUAM RETIREMENT  
48 FUND,

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ORDER

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Defendants.

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On August 3, 2005, the parties filed a stipulation (Docket No. 16) to continue the trial  
55 herein, presently scheduled for September 27, 2005, and all other dates previously set forth in  
56 the December 14, 2004 Scheduling Order (Docket No. 11).<sup>1</sup> The parties stated that they were  
57 hoping to settle this matter with the Government of Guam Retirement Fund Board of Trustees  
58 (the “Board”). However, because the Board was not expected to meet and make a final  
59 determination on the Plaintiff’s application until September 2005, the parties requested a  
60 continuance of the trial and pretrial filings deadlines. The parties stated that they had  
61 “previously agreed to hold the . . . litigation in abeyance until such time as the Board would  
62 act,” and that they “firmly believe that this case will be disposed of on the administrative

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<sup>1</sup> The December 14, 2004 Scheduling Order established a discovery cut-off date (defined as the last day  
to file responses to discovery) of June 3, 2005. This date was agreed to by all parties herein.

1 level." Stipulation, Docket No. 16, at 2.

2       The proposed Scheduling Order lodged with the court requested that the discovery  
3 period be re-opened and that the discovery cut-off date be set at November 25, 2005. Although  
4 no specific trial date has been proposed, it would appear that the parties are requesting a trial  
5 date sometime in late February 2006.

6       Pursuant to Rule LR 16.5 of the Local Rules of Practice for the District Court of Guam,

7       [a] deadline established by a Scheduling Order will be extended **only upon a**  
8 **good cause finding** by the Court. In the absence of disabling circumstances,  
9 **the deadline for completion of all discovery will not be extended unless**  
10 **there has been active discovery. Delayed discovery will not justify an**  
11 **extension of discovery deadlines.** A motion to extend the deadline in a  
12 Scheduling Order must demonstrate a specific need for the requested extension,  
13 and should be accompanied by a detailed proposed amendment to the previously  
14 entered Scheduling Order. **The date for completion of discovery will be**  
15 **extended only if the remaining discovery is specifically described and**  
16 **scheduled, e.g., the names of each remaining deponent and the date, time**  
17 **and place of each remaining deposition.** The Court, in its discretion, may  
18 order that the client consent in writing to any continuance proposed by counsel.  
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20       Local Rule LR 16.5 (emphasis added).

21       In addition to the above, Local Rule GR 6.1 provides that

22       [n]o continuance shall be granted merely on the stipulation of the parties. If the  
23 Court is satisfied that counsel are preparing the case with diligence and  
24 additional time is required to comply under these Rules, the parties may move  
25 the Court to extend the dates for the obligations imposed under these Rules,  
26 upon submission of a timely stipulated motion signed by all counsel setting forth  
27 the reasons for the requested continuance. **No continuance will be granted**  
28 **unless the stipulation has been lodged before the date upon which the act**  
29 **was to have been completed under this Rule.**

30       Local Rule GR 6.1 (emphasis added).

31       Based on the above rules, the parties' request is not timely. The discovery deadline was  
32 set for June 3, 2005. Yet, subsequent to that deadline, the parties are requesting a re-opening of  
33 the discovery period, because they agreed – without approval from the Court – to hold the  
34 litigation in abeyance. The parties should have filed their request prior to June 3, 2005.

35       Second, even if the Court were to excuse the tardily submitted request, the stipulation  
36 fails to identify the remaining discovery as required by Local Rule LR 16.5. The parties'  
37 stipulation fails to set forth the names of each remaining deponent and the date, time and place

1 of each remaining deposition. The parties do not appear to have engaged in "active discovery."  
2 Instead, this is a case of "delayed discovery" which will not justify an extension of the  
3 discovery deadline.

4 While the Court will not re-open the discovery period, the Court will vacate the  
5 September 27, 2005 trial and associated pretrial deadlines to permit the parties to attempt to  
6 settle this case on the administrative level. Accordingly, trial herein shall be governed by the  
7 following schedule:

- 8 • Pursuant to Local Rule LR 16.7(b), the parties shall each file a trial brief by  
9 **Monday, November 7, 2005;**
- 10 • A preliminary pretrial conference shall be held on **Tuesday, November 15, 2005 at 10:30 a.m.;**
- 11 • The parties shall each file an Exhibit List in conformance with Rule 16.7(d) of  
12 the Local Rules of Practice for the District Court of Guam, Discovery Material  
13 Designations, and a Witness List (including potential impeachment and rebuttal  
14 witnesses) under separate cover no later than **Tuesday, November 22, 2005.** The Witness List shall also contain a brief description (two to three paragraphs)  
15 of each witness's expected testimony;
- 16 • Three complete sets of marked and tabbed exhibits in three-ring binders shall be  
17 lodged with the Court no later than **Tuesday, November 22, 2005.** A copy of  
18 the Exhibit List shall be included in each three-ring binder. The parties shall  
19 meet and confer sufficiently in advance of trial and formulate a set of joint  
20 exhibits, if possible, to eliminate duplicate exhibits. Those exhibits upon which  
21 agreement cannot be reached shall be submitted separately by each respective  
22 party.
- 23 • If deposition transcripts will be used at trial, the original of said transcripts shall  
24 be lodged with the Court no later than **Tuesday, November 22, 2005,** and shall  
25 be in conformance with Rule 32.1 of the Local Rules of Practice for the District  
26 Court of Guam.
- 27 • A final pretrial conference shall be held on **Tuesday, November 29, 2005  
28 at 10:30 a.m.**

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1        •     The jury trial shall commence on **Tuesday, December 6, 2005<sup>2</sup>** at **9:00 a.m.**  
2                   before Judge D. Lowell Jensen.<sup>3</sup>

3                   SO ORDERED this 6th day of August 2005.

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5                   **JOAQUIN V.E. MANIBUSAN, JR.**

6                   **U.S. Magistrate Judge**

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26                   <sup>2</sup> This trial date is within the 18-month time frame contemplated in the Local Rules. Additionally, a  
27                   December trial date will permit the parties to attempt to settle this action during the Board's September 2005  
meeting.

28                   <sup>3</sup> The Honorable D. Lowell Jensen, United States Senior District Judge for the Northern District of California, sitting by designation.